IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 927 OF 2005
WITH
CHAMBER SUMMONS NO. 1161 OF 2005
IN
SUIT NO. 1612 OF 1979

Randhir Singh Bhalla. ... Plaintiff.

V/s.

Neelkanth Tirth Co-op. Housing
Society Ltd. and others. ... Defendants.

D.V.Merchant i/b. Shah & Sanghvi for the plaintiff.

H.V.Gala for defendant No.1

M.S.Rane i/b. Purnanand & Co. for deft.Nos.2 to 5.

H.J.Potat i/b. K.T.Shah for defendant Nos.6 & 7.

CORAM : A.M.KHANWILKAR, J.

DATED : 5th September, 2005.

P.C. :

. By consent Chamber Summons No.1161/2005 which is not on board is taken on board and heard along with Chamber Summons No.927/2005. This order will dispose of both Chamber Summons Nos.927/2005 and 1161/2005.

2. Chamber Summons No.927/2005 is taken out by defendant No.1 for framing additional 8 issues, whereas Chamber Summons No.1161/2005 is taken out by defendant Nos.2 to 5 for framing additional one issue.

3. In so far as proposed Issue No.1 in Schedule- A to Chamber Summons taken out by defendant No.1 is concerned, by consent the same is framed as an additional issue being Issue No.12-D.

4. In so far as proposed Issue No.2 in Schedule- A to Chamber Summons taken out by defendant No.1 is concerned, counsel for the plaintiff contends that the same is covered by Issue No.2 already framed. Indeed, the plaintiff may be justified in that behalf, however, the proposed Issue No.2 is specific to the facts asserted by the plaintiff and denied by the defendants about the factum of possession of plaintiff at any point of time. In the circumstances, proposed Issue No.2 be framed as additional issue being Issue No.12-E.

5. In so far as proposed Issue No.3 in Schedule- A to Chamber Summons taken out by defendant No.1 is concerned, counsel for the plaintiff contends that even this issue is covered by Issue Nos.2 and 12 already framed. Issue No.2 already framed is: "Whether the plaintiffs prove that the defendant Nos.1 to 7 have wrongly encroached upon the said lands?" and Issue No.12 is: "Whether defendant No.1 proves that he or they are lessees of other defendants and the plaintiff cannot evict them from the suit premises and they are in

adverse possession against the plaintiffs?" By proposed Issue No.3 the defendant No.1 wants the following issue to be framed :

> "Whether the Plaintiff proves that the Defendants entered upon the suit land surreptitiously?

In my opinion, it is rightly contended by the plaintiff that this aspect can be answered while considering Issue No.12 relating to the claim of adverse possession set up by the defendant. Hence it is not necessary to frame proposed Issue No.3 as additional issue.

6. In so far as Issue Nos.4, 5, 6 and 7 in Schedule-A to Chamber Summons taken out by defendant No.1 are concerned, counsel for the parties agree that the proposed issues can be reframed as under:

> "Whether the defendants prove that the plaintiff is estopped on account of acquiescence or waiver or laches or adverse possession from asserting his rights in respect of suit property against the defendants?"

Accordingly the reframed issue as referred to above is framed as additional issue being Issue No.12-F.

7. In so far as Issue No.8 in Schedule-A to Chamber Summons taken out by defendant No.1 is concerned, it is agreed that this issue can be reframed as follows:

"Whether defendant No.1 proves that its members (flat purchasers) are bonafide purchasers for value without notice?'

Accordingly this issue is framed as additional issue being Issue No.12-G.

8. Counsel for the parties fairly state that relief in terms of prayer clause (b) of the chamber summons taken out by defendant No.1 may be granted as it is only a clerical error. Accordingly, relief in terms of prayer clause (b) is granted.

9. Chamber Summons No.927/2005 is allowed in the above terms. The additional issues be incorporated as Issue Nos.12-D to 12-G.

10. In so far as Chamber Summons No.1161/2005 taken out by defendant No.2 to 5 is concerned, in my opinion, the proposed issue set out in Schedule-A to the said chamber summons is covered by additional issue referred to above and incorporated as Issue No.12-F. Hence no further order is required on this chamber summons.

11. Both the chamber summonses are disposed of accordingly with no order as to costs.

(A.M.KHANWILKAR, J.)